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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/692,191

10/22/2003

Pamela Cifra

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05/23/2011

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EXAMINER

ROYDS, LESLIE A

ART UNIT

PAPER NUMBER

1629

NOTIFICATION DATE

DELIVERY MODE

05/23/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptomailnyc@kslaw.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/692,191

Applicant(s)

CIFRA ET AL.

Examiner

Leslie A. Royds Draper

Art Unit

1629

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 May 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☒ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 127,128,139-141 and 152-154.
Claim(s) rejected: 126-164.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.

/Leslie A. Royds Draper/
Primary Examiner, Art Unit 1629

Continuation of 3. NOTE:

Applicant's proposed amendment to remove the words "about" as recited in instant claims 129-131, 142-144 and 155-157 will not be entered into the record because the proposed amendments raise new issues that require further consideration and/or search.

In particular, the removal of the term "about" requires the concentration of zinc to be limited to the range recited in the claims and eliminates the tolerated variance outside such a range as implied by the use of the term "about". Such an amendment would require an assessment of the currently applied prior art to determine whether it is still applicable to the claims and/or to determine whether there is additional prior art that is relevant to the claims as proposed. As a result, the amendments clearly raise new issues that require additional consideration and/or search than what has already been provided by the Office.

In addition, the proposed claim amendments filed May 2, 2011 are not deemed to place the application in better form for appeal because they fail to address the substantive rejections of record and, as a result, fail to materially reduce or simplify the issues for appeal. For these reasons, the claim amendments are not entered.

Continuation of 13. Other:

Note that 37 CFR 1.4 requires an appropriate signature on all correspondence submitted to the Office, which was not provided in the instant submission dated May 2, 2011. Note also the requirements of 37 CFR 1.121(c), which requires a full and complete listing of all claims ever presented. Applicant has also failed to present any arguments against any of the currently pending rejections and, accordingly, in the absence of such remarks, and further in view of the fact that the instant submission dated May 2, 2011 is not entered into the record, the claims remain rejected for the reasons of record set forth in the final rejection dated April 21, 2011, of which said reasons are herein incorporated by reference.

Applicant is reminded that submissions to the central fax number (571-273-8300) will be incorporated into the instant application as part of the official record. Correspondence for the purpose of discussion during interviews should be directed to the Examiner of record.

/Leslie A. Royds Draper/
Primary Examiner, Art Unit 1629